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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,511	02/04/2002	Thomas Frederick Enns	747/9-1647	7543

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William J. Sapone  
Coleman Sudol Sapone P.C.  
714 Colorado Avenue  
Bridgeport, CT 06605

[REDACTED] EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/067,511	ENNS, THOMAS FREDERICK
	<b>Examiner</b>	<b>Art Unit</b>
	Matthew F DeSanto	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 04 February 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### **Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 2, 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kay et al. (USPN 4743231).

Kay et al. discloses a needle device with an L-shaped hollow needle (14), and a body secured to the needle (12), wherein the body includes a spacer (16) and a base (12). (Figures 1-3, and entire reference)

The handles are flexible away from said base. (Figures 2, 3 and entire reference)

The reference also discloses a breathable pad, which extend around the periphery of the base, and wherein the pad is foam, as well as having a flexible tube having one end coupled first portion of said needle.

3. Claims 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 15, 16 are rejected under 35 U.S.C. 102(b) as being anticipated Marcus by 4813939.

Marcus discloses a needle device with an L-shaped hollow needle (26), and a body secured to the needle (A), and a flexible tube having one end coupled to the first portion of said needle wherein the body includes a spacer (B) and a base, and wherein said spacer, base and handles are integral. (Figures 1-3, 5-12 and entire reference)

As to claim 4, 15, wherein said handles include a groove and the groove is a v-shaped (40, 41), for increased flexing of the handles (23, 24). (Figures 11, 12)

As to claims 11, 12, wherein said first portion of said L-shaped needle extends substantially parallel to said base, and second portion of said L-shaped needle extends from said substantially perpendicular to said base, and wherein the needle extends approximately from said center of said base. (Figure 5, 9, and entire reference)

As to claims 13, 14, wherein needle device further comprises a spine (80, A) on the backside of said pair of handles, and wherein said spine includes a needle cover for covering at least a portion of said first portion of said needle and cover unitary with said spacer, base and handles. (Figures 1, 3, 5, 8, 11 and entire reference)

4. Claims 1, 2, 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Raines (UPSN 4631058).

Raines discloses a needle device with an L-shaped hollow needle (10), and a body secured to the needle (14), wherein the body includes a spacer and a base. (Figures 1 and entire reference)

The handles are flexible away from said base.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcus as applied to claims 1 - 6, 10 - 13, 15, 16 above, and further in view of Kay et al. as applied to claims 1-3 above.

Marcus disclosed the claimed invention but fails to show a breathable pad on said base, and wherein the pad is a foam pad and extends around the periphery of the base.

Kay et al. discloses an L-shaped needle device with a breathable pad, and wherein the pad is foam and extends around the periphery of the base. (Column 5, lines 5-16)

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the disclosed invention of Marcus with the teachings of Kay et al. because Kay et al. teaches that by using an open cell pad, it allows for antiseptic or

antibiotic solution to be supplied to the patients skin, therefore reducing the like hood of infection, which is an advantage within the medical profession.

Therefore, it would have been obvious to combine Marcus with Kay et al. to obtain the invention as specified in claims 1-16.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

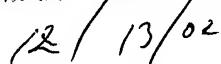
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.



Matthew DeSanto  
Art Unit 3763  
December 13, 2002

ANHTUAN T. NGUYEN  
PRIMARY EXAMINER



12 / 13 / 02